

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAY 29 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

BRETT FISHER,

Appellant.

2 CA-CR 2007-0276

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20070052

Honorable Robert Duber II, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 After a jury trial, appellant Brett Fisher was convicted of trafficking in stolen property in the second degree, a class three felony, and theft of stolen property valued at more than \$250 but less than \$1,000, a class six felony. The trial court suspended the

imposition of sentence, placed Fisher on forty-eight months' probation, ordered him to serve 365 days in jail as a condition of his probation, and ordered him to pay \$579 in restitution. Appellate counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record thoroughly and has found no arguable issues to raise on appeal. She asks this court to search the record for fundamental error. Fisher has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to sustaining the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence established that Fisher knowingly possessed his mother-in-law's ring¹ without her permission and sold it to a local jewelry store. *See* A.R.S. §§ 13-2307(A) and 13-1802(A)(1).

¶3 Despite counsel's avowal that she could find no arguable issue to raise on appeal, she suggests the trial court's denial of Fisher's motion for judgment of acquittal "may provide the appearance of an arguable issue." A trial court may grant a motion for judgment of acquittal only if the state has failed to present substantial evidence warranting a conviction. Ariz. R. Crim. P. 20(a). At the conclusion of the state's case, trial counsel moved for a judgment of acquittal on the ground that the evidence did not establish the value of the ring was between \$2,000 and \$3,000, as set forth under former § 13-1802(A) and (E), one of the statutes under which Fisher had been charged.² The trial court agreed and granted

¹The ring, which we refer to in the singular form in this decision, was actually two rings soldered together.

²Amended by 2006 Ariz. Sess. Laws, ch. 195, § 2.

the motion “insofar as it deals with valuing or assessing the property at the time of the theft, leaving the level of theft or trafficking to a value of \$1,000 or less,” but denied the motion “[i]n all other respects.” Having granted the motion to the extent Fisher was challenging the sufficiency of the evidence to establish the value of the ring, we find no error in the court’s then proceeding with the trial.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, Fisher’s convictions and the probationary term imposed are affirmed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge